

1
2
3
4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6
7 Jihad Anthony Zogheib,
8 Petitioner,
9 v.

Case No.: 2:14-cv-855-JAD-NJK

10 Steve Wolfson, in his Capacity as District
11 Attorney, Clark County, Nevada,
12 Respondent.

13
14 **Order**

15 Petitioner Jihad Anthony Zogheib commenced this action by filing a Petition for Writ
16 of Mandamus alleging overzealous prosecution by the Clark County District Attorney. Doc.
17 1 at 1-4. Zogheib also moves for a hearing on his mandamus petition. Doc. 5. Zogheib has
18 put the cart before the horse: he needs to first file a complaint, have a summons issued, and
effectuate proper service of process before the relief he seeks can even be considered.

19 Federal Rule of Civil Procedure 81(b) abolished the writ of mandamus. Relief
20 previously available by mandamus petition “may be obtained by appropriate actions or
21 motion under” the Federal Rules of Civil Procedure. FRCP 2 teaches that “there is one form
22 of action—the civil action.” And FRCP 3 tells us simply that “A civil action is commenced
23 by filing a complaint with the court.” The next step in the civil-action process is prescribed
24 by FRCP 4(b), which tells us “On or after filing the complaint, the plaintiff may present a
25 summons to the clerk for signature and seal. If the summons is properly completed, the clerk
26 must sign, seal, and issue it to the plaintiff for service on the defendant. A summons . . .
27 must be issued for each defendant to be served.” FRCP 4(c)(1) emphasizes, “A summons
28 must be served with a copy of the complaint. The plaintiff is responsible for having the

1 summons and complaint served within the time allowed by Rule 4(m) and must furnish the
 2 necessary copies to the person who makes service.”¹

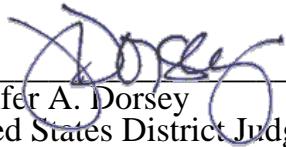
3 Zogheib has skipped these critical, initial steps. His petition, which is not styled as a
 4 complaint, is not a complaint, and it does not appear that he has sought the issuance of any
 5 subpoena or effectuated service of any of his filings on the defendant. Although these
 6 deficiencies would permit me to dismiss this action without prejudice, in the interest of
 7 justice and leniency, I instead deny the petition for writ of mandamus [Doc. 1] and the
 8 request for a hearing on that petition [Doc. 5] without prejudice and give Zogheib until
 9 December 15, 2014, to (1) file a proper complaint, (2) effectuate service of process on the
 10 defendant in compliance with the rules of this court, and (3) file proof of service. Zogheib is
 11 strongly cautioned that failure to comply with any portion of this order may result in the
 12 dismissal of this action with prejudice.

13 Accordingly, it is HEREBY ORDERED that Zogheib’s Petition for Writ of
 14 Mandamus [Doc. 1] is **DENIED** without prejudice;

15 IT IS FURTHER ORDERED that Zogheib’s Motion for Hearing on the Petition [Doc.
 16 5] is **DENIED** without prejudice;

17 IT IS FURTHER ORDERED that **Zogheib must do the following by December 15,
 18 2014: (1) file a proper complaint in this action, (2) effectuate service of process
 19 (summons and complaint) on the defendant in compliance with the rules of this court,
 20 and (3) file proof of that service.** Failure to complete any one of these may result in the
 21 dismissal of this action with prejudice.

22 DATED: November 13, 2014.

23 
 24 Jennifer A. Dorsey
 United States District Judge

25

26 ¹ Even if I were to liberally construe the petition as a complaint, it does not appear that Zogheib
 27 has effectuated service. FRCP 4(m) specifies that “[i]f a defendant is not served within 120 days after
 28 the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the
 action without prejudice against that defendant or order that service be made within a specified time.
 But if the plaintiff shows good cause for the failure, the court must extend the time for service for an
 appropriate period.” More than 120 days have passed since the petition was filed.